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STATE OF NEW HAMPSHIRE THE GOVERNOR AND EXECUTIVE COUNCIL

Governor: John H. Lynch

Executive Council Members:

Hon. Raymond S. Burton (First District)
Hon. John D. Shea (Second District)
Hon. Beverly A. Hollingworth (Third District)
Hon. Raymond J. Wieczorek (Fourth District)
Hon. Debora B. Pignatelli (Fifth District)

* * * * *

IN RE:

COMMISSIONER BODI 10-001

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REMOVAL PETITION held before Governor John H.
Lynch and the Executive Council at the Legislative
Office Building, Rooms 301 - 303, 33 North State
Street, Concord, New Hampshire, on Thursday,
September 23, 2010, commencing at 9:04 a.m.

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Licensed Court Reporter
Registered Merit Reporter
NH LCR No. 26 (RSA 310-A)

I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS

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E X H I B I T S

PETITIONER'S: FOR ID IN EVIDENCE

1 - Search warrant -- Prior to
December 14, 2009 hearing

2 - Search warrant Prior to
December 15, 2009 -- hearing

3-A - Photograph -- Prior to
hearing

3-B - Photograph -- Prior to
hearing

3-C - Photograph -- Prior to
hearing

3-D - Photograph -- Prior to
hearing

3-E - Photograph -- Prior to
hearing

3-F - Photograph -- Prior to
hearing

4 - Administrative Notice -- Prior to
hearing

E X H I B I T S

PETITIONER'S: FOR ID IN EVIDENCE

5 - Commissioner Bodi's oath -- Prior to hearing

6 - Chapter P-251 of the New Hampshire Division of Liquor Enforcement Licensing Administration and Operations Manual Prior to hearing 157

7 - Chapter O-405 of the New Hampshire Division of Liquor Enforcement Licensing Administration and Operations Manual Prior to hearing 504

8 - Memo dated December 9, 2009 Prior to hearing 335

9 - Unsworn statement from Representative Daniel Eaton 648 --

RESPONDENT'S

A- Transcript of Mark Bodi's Grand Jury testimony Prior to hearing 171

B - Suspension letter dated February 19, 2010 Prior to hearing --

C - WITHDRAWN

RESPONDENT'S: FOR ID IN EVIDENCE

Prior to
hearing --

Prior to
hearing --

Prior to
hearing --

Prior to
hearing --

Prior to
hearing --

	E	X	H	I	B	I	T	S	
	RESPONDENT'S:				FOR ID				IN EVIDENCE
1	I - Mark Bodi's								
2	Response (by								
3	Attorney								
4	McLaughlin)								
5	dated May 21,								
6	2010 to Attorney								
7	General's Motion								
8	to Unseal with								
9	Affidavit of				Prior to				
10	Mark Bodi				hearing			--	
11	J - Court Order								
12	dated June 4,								
13	2010 regarding								
14	unsealing of				Prior to				
15	records				hearing			--	
16	K - Letter dated								
17	June 22, 2010								
18	to Governor								
19	and Council								
20	from Attorney				Prior to				
21	McLaughlin				hearing			--	
22	L - Motion dated								
23	June 28, 2010 to								
24	Clarify Court								
25	Order and/or				Prior to				
26	Unseal Transcript				hearing			--	
27	M - Order dated								
28	August 5, 2010								
29	issued by								
30	Merrimack County				Prior to				
31	Superior Court				hearing			--	
32	N - Recorded interview				Prior to				
33	of Joseph Fussell				hearing			--	

	E	X	H	I	B	I	T	S	
	RESPONDENT'S:			FOR ID			IN EVIDENCE		
1									
2									
3	O - Recorded interview								
4	of Chief Eddie						Prior to		
5	Edwards						hearing	--	
6	P - Recorded interview								
7	of Major Todd						Prior to		
8	Feyrer						hearing	--	
9	Q - Recorded interview								
10	of Chief Eddie						Prior to		
11	Edwards						hearing	--	
12	R - Recorded interview						Prior to		
13	of Randy Filiault						hearing	--	
14	S - Recorded interview								
15	of Representative						Prior to		
16	Dan Eaton						hearing	--	
17	T - WITHDRAWN								
18	U - Brochure entitled,								
19	"Senate Ways and								
20	Means Committee,								
21	SB 181, Liquor								
22	Commission								
23	Modernization						Prior to		
24	Act 2009"						hearing	--	
25	V - Chronology of								
26	events prepared						Prior to		
27	by Chairman Bodi						hearing	--	
28	W - Deposition of								
29	Chief Eddie						Prior to		
30	Edwards						hearing	--	
31	X - Deposition of								
32	Major Todd						Prior to		
33	Feyrer						hearing	--	

E X H I B I T S

RESPONDENT'S: FOR ID IN EVIDENCE

Y - Text of NH RSA

176:1, 2, 3, 4,

Prior to

7 and 8

hearing

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Z - Investigator

Richard Tracy's

Memorandum to

File dated

Prior to

February 11, 2010

hearing

527

AA - Chairman Bodi's

letter dated

February 11,

2010 to Senior

Assistant General

Prior to

Jane Young

hearing

--

BB - Transcript of

voice mail

message dated

February 9,

2010 from

Chairman Bodi

to Investigator

Prior to

Richard Tracy

hearing

526

CC - WITHDRAWN

DD - WITHDRAWN

EE - Copy of Attorney

General's Office

Prior to

Web page

hearing

528

FF - Union Leader

August 6 and

Prior to

August 7, 2010

hearing

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E X H I B I T S

RESPONDENT'S: FOR ID IN EVIDENCE

GG - Attorney General

response and

disclosure of

September 13, 2010

Prior to

hearing

--

HH - Harvey Hill

Prior to

Memorandum

hearing

564

JJ - Letter addressed

to Whom It May

Concern from

Joseph Fussell

Prior to

hearing

125

KK - Copy of

Commissioner

Bodi's prepared

opening statement

538

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<p style="text-align: right;">646</p> <p>1 P R O C E E D I N G S</p> <p>2 (The proceedings commence at 9:04 a.m.)</p> <p>3 GOVERNOR LYNCH: So good morning,</p> <p>4 everybody. I believe the schedule for today is,</p> <p>5 Attorney Rice, I believe you're going to introduce</p> <p>6 some testimony from Representative Eaton.</p> <p>7 MS. RICE: Yes, that's correct.</p> <p>8 GOVERNOR LYNCH: Correct. Okay. And</p> <p>9 then we'll go to closing statements, and you'll</p> <p>10 start off, Attorney McLaughlin, and then we'll</p> <p>11 have Attorney Rice. Now we'll start the hearing,</p> <p>12 so why don't you begin, if you would.</p> <p>13 MS. RICE: Sure. Thank you, Governor.</p> <p>14 Representative Eaton has forwarded a letter to us</p> <p>15 which I will submit to you. My plan was to have</p> <p>16 this marked for identification and then have him</p> <p>17 swear to the actual statement and then turn that</p> <p>18 over to counsel so that you have a sworn</p> <p>19 statement, but for purposes of this proceeding you</p> <p>20 will have something. If I could, I would just</p> <p>21 like to read it into the record.</p> <p>22 GOVERNOR LYNCH: Um-hum.</p> <p>23 MS. RICE: The statement is as follows.</p>	<p style="text-align: right;">647</p> <p>1 "To the best of my knowledge, I have not ever met</p> <p>2 Mr. Harvey Hill. That said, at some point several</p> <p>3 years ago I did receive a phone call from someone</p> <p>4 who said that he was Harvey Hill. The caller</p> <p>5 stated his purpose in calling was to inform me</p> <p>6 that he had just fired the director of the Keene</p> <p>7 Community College campus.</p> <p>8 It should be noted that I was</p> <p>9 instrumental in establishing the Keene campus and</p> <p>10 had been invited by the system to participate in</p> <p>11 interviewing and hiring the Director. I did in</p> <p>12 fact state to Mr. Hill that I thought that was a</p> <p>13 stupid decision since the Director had worked</p> <p>14 tirelessly to make the campus an educational and</p> <p>15 financial success after many obstacles.</p> <p>16 I did not rant about other parts of the</p> <p>17 system, employees or make any threats of any</p> <p>18 kind. I have always been and continue to be a</p> <p>19 strong supporter of the Community College System.</p> <p>20 When I asked Mr. Hill why he was calling me with</p> <p>21 this information, he stated that he wanted the</p> <p>22 pleasure of telling me that he had fired my</p> <p>23 'pet,'" which is in quotations.</p>
<p style="text-align: right;">648</p> <p>1 "The entire conversation lasted between</p> <p>2 30 and 60 seconds. I ended the conversation with</p> <p>3 an expletive directed at Mr. Hill and hung up. I</p> <p>4 will be happy to provide additional information if</p> <p>5 requested. Upon return, I will swear to the truth</p> <p>6 of this statement. Daniel Adams Eaton."</p> <p>7 GOVERNOR LYNCH: Thank you.</p> <p>8 MS. RICE: So I will have this marked for</p> <p>9 identification as an exhibit and provide you with</p> <p>10 copies, Your Honor.</p> <p>11 (Petitioner's Exhibit 9 is marked for</p> <p>12 identification.)</p> <p>13 MS. RICE: And I would also put on our</p> <p>14 request that we would like to do further</p> <p>15 examination of Commissioner Bodi.</p> <p>16 GOVERNOR LYNCH: Okay. Thank you,</p> <p>17 counselor. Attorney McLaughlin.</p> <p>18 MR. MCLAUGHLIN: Governor Lynch, ladies</p> <p>19 and gentlemen of the Council, as a housekeeping</p> <p>20 matter I think your attorneys would first expect</p> <p>21 me to acknowledge that the proffer of the letter</p> <p>22 from Dan Eaton was by agreement, and the process</p> <p>23 was by agreement, and the record should reflect</p>	<p style="text-align: right;">649</p> <p>1 that.</p> <p>2 I come to this process representing</p> <p>3 Commissioner Bodi as much of an outsider as there</p> <p>4 anybody is here. I'm an attorney. I practice in</p> <p>5 Laconia. I'm not privy to the give and take of</p> <p>6 Concord. I used to be. But I'm not anymore. So</p> <p>7 I see myself as an outsider, and then I become</p> <p>8 involved in this process to represent a client,</p> <p>9 and all of a sudden plunged into this environment</p> <p>10 which is hot and heavy with personalities and</p> <p>11 points of view, et cetera, et cetera, et cetera.</p> <p>12 And I suppose if you're in that environment, maybe</p> <p>13 like living in a home with people that yell at</p> <p>14 another one all the time as opposed to my home</p> <p>15 where there's rarely an argument, maybe you just</p> <p>16 get used to that. That's the way it is.</p> <p>17 I'm hoping that I can offer you a</p> <p>18 perspective this morning that reflects my view of</p> <p>19 things, and I fully understand that if my</p> <p>20 perspective is at variance with what you consider</p> <p>21 the evidence to be, then there will be no point in</p> <p>22 my perspective. So I would like to make some</p> <p>23 observations, if I may.</p>

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<p>1 First of all, no one after the fact 2 should have any cause to complain that this 3 hearing proceeded in anything other than a fair 4 way. It was calm. It was orderly. Your rulings 5 were completely reasonable and fair. My client 6 began his opening a couple of days ago by 7 commenting on the assistance of counsel. The same 8 thing. Much appreciated. It was fair. And there 9 have been no arguments about that.</p> <p>10 I would like to just pay some attention 11 for a moment to my client and his personality 12 because that personality may in some way bear upon 13 your thinking. My client and I do not share the 14 same personality features. He is an enormously 15 energetic person. He moves at twice the pace I 16 move. Three or four times the pace I move. He 17 speaks faster. He's more emotive. His wife 18 describes him as the Emergizer Rabbit. His 19 personality type is what makes the world 20 go-round.</p> <p>21 He's an entrepreneur. He doesn't know 22 the meaning of no. He's the core of the American 23 business establishment. It's why things work.</p>	<p>1 Lawyers do not make the world go-round. Lawyers 2 are at the peripheries. It's people like Mark 3 Bodi who make the world go-round, and, without 4 knowing, I am suspecting that the reason that Mark 5 Bodi was brought into government is because he had 6 skills on the outside that seemed very, very 7 compatible with what was perceived to be needed at 8 the Liquor Commission. That is my guess. I don't 9 know that, Governor, but that would be my surmise 10 as to what was going on.</p> <p>11 So you bring in a person with this hard- 12 charging personality. And he's expressed 13 himself. Forcefully. More forcefully than other 14 people might do but true to his own personality 15 and true to his belief because he stands in the 16 shadow that I would suspect none of you have ever 17 stood in.</p> <p>18 This man, who considers himself an 19 excellent hire, high-energy performer, should be 20 seen as a person who over the last six to seven 21 months has experienced something that I am 22 suspecting none of you have ever experienced. He 23 has experienced the humiliation of a -- a public</p>
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<p>1 process by which he is under investigation for 2 committing a crime.</p> <p>3 Now, I've practiced law for 35 years. 4 And I've seen many, many people. I've defended 5 many people. I've prosecuted many people. And 6 I'm always reminded of something that I learned in 7 the very, very first day that I was at sea on my 8 ship in the Navy where my chief came up to speak 9 to me at the midwatch.</p> <p>10 I hadn't even met him, and he said, 11 "Mr. Mac, my name is General Palmer. You want to 12 rely on your Navy schooling or do you want to know 13 how it works?" It's the best advice ever given to 14 me. I said, "Chief, tell me how it works." Later 15 I learned that the captain had sent him up to tell 16 me what in the Navy language the gouge is. How's 17 it work.</p> <p>18 So let me tell you how it works. If 19 you're accused or you are suspected of acts in the 20 paper, more than half the people out here on the 21 street think you've done something. That's the 22 truth. So, as he would express it to me, he spent 23 weeks and months walking around looking down when</p>	<p>1 he passed people because looking them in the eye 2 was too painful. They may not have been thinking 3 a thing, but he thinks that when he's looked at 4 that people are looking at him and thinking that 5 he's a crook. He's done something hideous. And 6 the fact that he denies it, well, all crooks deny 7 things. And that's the way it works.</p> <p>8 And at the end of the day he had a 9 conversation with the Governor, and as a result of 10 that conversation there was a letter that was 11 given from the Governor. Completely reasonable 12 letter, which led to his being -- let's use the 13 word suspended with pay during the pendency of an 14 investigation. At that moment Mark Bodi generally 15 believed that when the investigation was finished 16 he would be returning to work. Now, that's what 17 he believed.</p> <p>18 The investigation did finish. There was 19 no indictment. But before the event of no 20 indictment, as he testified, his attorney did get 21 a call. And the call was if -- resign. There 22 will be no chance of indictment. His response, as 23 he stated, if he did that, once again, in the real</p>

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<p>1 world, the difference between the Navy rules and</p> <p>2 the way it works, virtually everybody out there on</p> <p>3 the street would have thought Mark Bodi's a</p> <p>4 crook. He got off. He resigned instead of having</p> <p>5 to face criminal trial. That is what people would</p> <p>6 believe.</p> <p>7 I want to step back for a moment. If</p> <p>8 when I say something like that you don't accept</p> <p>9 that as the truth, then I defer to you. My</p> <p>10 intention during the entirety of this argument is</p> <p>11 not to make any statements to you that I think is</p> <p>12 somehow or other at variance with the truth. I'm</p> <p>13 hoping I'll speak at a pace so that each of the</p> <p>14 principal points I'm making can be considered by</p> <p>15 you, and you can ask yourself as we go along is</p> <p>16 this attorney saying something that makes sense in</p> <p>17 light of what we've heard? That is my goal. If</p> <p>18 you go at that pace, and you can decide for</p> <p>19 yourself whether or not I'm saying something at</p> <p>20 variance with reality or whether or not it makes</p> <p>21 sense to you.</p> <p>22 So I'm telling you. He would not accept</p> <p>23 a so-called plea agreement where everything would</p>	<p>1 be dropped if he just resigned because, as he</p> <p>2 said, they'll think I'm a crook. He may be many</p> <p>3 things. He's a proud man. He didn't want to</p> <p>4 resign. He wanted his day in court. He did not</p> <p>5 expect formally a Grand Jury's decision and the</p> <p>6 Attorney General's decision that there would then</p> <p>7 be a Petition to remove him for malfeasance.</p> <p>8 Malfeasance is what I would call the</p> <p>9 civil analogue of doing something illegal. If he</p> <p>10 had done something illegal in this sense, he would</p> <p>11 have been indicted. I wouldn't be arguing to</p> <p>12 you. I'd be arguing to a jury over here in the</p> <p>13 Merrimack County Superior Court in a criminal</p> <p>14 case, but there was no crime. Praise the man. He</p> <p>15 actually believed he was going to be coming back</p> <p>16 at that point.</p> <p>17 You raised a question yesterday,</p> <p>18 Councilor Burton. Would you be ready to go back</p> <p>19 depending upon the outcome, and he gave you a</p> <p>20 truthful answer. I'll give you mine. My belief</p> <p>21 is that my client would embrace the opportunity to</p> <p>22 go back. I believe he would embrace it because he</p> <p>23 really did see himself as making positive change,</p>
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<p>1 but he saw himself as a change agent.</p> <p>2 I have a sense that you would probably</p> <p>3 know more about that than I would because I</p> <p>4 recognize it's your job to keep your sense of</p> <p>5 pulse of what's going on with government, and I</p> <p>6 suspect he did annoy some people over there, and I</p> <p>7 suspect he did push some people who weren't the</p> <p>8 best performers. But at the end of the day, while</p> <p>9 you may think differently, I -- I heard that major</p> <p>10 say that the investigators, whose integrity</p> <p>11 theoretically is on the line, would welcome him</p> <p>12 back.</p> <p>13 And when challenged, well, would</p> <p>14 everybody, the answer to that is always no, not</p> <p>15 everybody. He said no, the investigative staff,</p> <p>16 some 30 people. So we at least know if he</p> <p>17 returns, it's not an offense and affront to the</p> <p>18 dignity of the investigative staff. Have I said</p> <p>19 something there that isn't correct?</p> <p>20 So, with that bit of preliminary, I would</p> <p>21 like to do what I would have hoped could have</p> <p>22 happened here along the way. I would have hoped</p> <p>23 it could have happened along the way, but it</p>	<p>1 didn't. I'm going to step back. Because, from my</p> <p>2 perspective, somewhere along the way people should</p> <p>3 have stepped back. Just stepped back. At the end</p> <p>4 of the day it is no one's fault that that didn't</p> <p>5 happen.</p> <p>6 But, Commissioner Wieczorek, you asked a</p> <p>7 question yesterday that seemed to me to go to the</p> <p>8 core of it when you said to him what do you think</p> <p>9 you should have done? And he said I think I</p> <p>10 should have gone over to the Attorney General's</p> <p>11 Office, slammed my fist down and told him -- I</p> <p>12 don't know what his words were, but it was pretty</p> <p>13 demonstrative. It's probably true. But he</p> <p>14 didn't. And does that not present the question</p> <p>15 why didn't he? It would seem to me to present</p> <p>16 that question. And that's what I've rassed with,</p> <p>17 but I don't rattle with it the way other people do</p> <p>18 because I wasn't a party to it.</p> <p>19 I'll tell you how I think about things so</p> <p>20 you'll know how I've tried to represent my</p> <p>21 client. If you consider what I do for a living,</p> <p>22 nobody ever knocks on my door and says I've had a</p> <p>23 great day, and I want to pay you your fee hourly</p>

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<p>1 to share it with you. That does not happen in my</p> <p>2 universe. In my universe, over the course of 35</p> <p>3 years, whether I've defended, prosecuted, been in</p> <p>4 government, not in government, the only time</p> <p>5 anybody knocks on my door is with a problem.</p> <p>6 That's it. And I am always a stranger to the</p> <p>7 problem. I have to figure out what that problem</p> <p>8 is.</p> <p>9 And you can imagine that it's extremely</p> <p>10 common for me to have people presenting themselves</p> <p>11 to me in a rather frantic way, so you have to</p> <p>12 settle down. You have to figure out, and you</p> <p>13 understand you're hearing it from their point of</p> <p>14 view. Well, what's the chance of their point of</p> <p>15 view being 100 percent accurate? Zero. That's</p> <p>16 been my universal experience.</p> <p>17 So I use the phrase step back. Let me</p> <p>18 tell you what the metaphor is in my mind and has</p> <p>19 been since 1974. I always think of it like trying</p> <p>20 to scale a cliff like the cliffs in Rumney.</p> <p>21 That's what's in my head. And I'm slipping.</p> <p>22 That's what's in my head. What am I looking for?</p> <p>23 I'm looking for a toehold, something to grab onto</p>	<p>1 so I can stop the fall. That's my metaphor. Stop</p> <p>2 the fall. Steady myself on the cliff and start to</p> <p>3 climb back up.</p> <p>4 Now, that's how I thought about it for</p> <p>5 many, many years. Let me tell you how I thought</p> <p>6 about it last night. Just accept what I'm telling</p> <p>7 you. I have found the representation of</p> <p>8 Commissioner Bodi so troubling on so many fronts</p> <p>9 because there's so many ramifications to it.</p> <p>10 There's so many -- there is so many -- so many</p> <p>11 events occurring around it.</p> <p>12 That's why I began, Governor, by saying</p> <p>13 thank you for the orderly proceeding. Coming in</p> <p>14 here, I did not know what the proceeding would be</p> <p>15 about, and you have brought dignity to the</p> <p>16 process. That's just a fact. So however people</p> <p>17 may look at this in the future, don't let anybody</p> <p>18 complain for whatever reason that there is not</p> <p>19 dignity in this process. There's remarkable</p> <p>20 dignity in this process.</p> <p>21 This is what I did last night as I</p> <p>22 pondered the question how can I present this case</p> <p>23 to these people in a way that best advocates the</p>
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<p>1 interests of my client. How am I going to do</p> <p>2 that? So I did what I do when I get nervous. I</p> <p>3 get on my John Deere tractor, and I drive around</p> <p>4 the yard. That's what I do. It relaxes me. Go</p> <p>5 figure. It's a big deal to me. The -- I don't</p> <p>6 know if you can see it. Do you mind?</p> <p>7 GOVERNOR LYNCH: No.</p> <p>8 (Attorney McLaughlin displays an image on</p> <p>9 his cell phone to the Governor and Executive</p> <p>10 Council.)</p> <p>11 MR. MCLAUGHLIN: I have an image on my</p> <p>12 camera. This is my wife. That's my</p> <p>13 granddaughter. That's my grandson. That's my</p> <p>14 son's dog. And that's me pulling them around the</p> <p>15 yard in a John Deere tractor. That's what I do.</p> <p>16 COUNCILOR WIECZOREK: Where is it?</p> <p>17 MR. MCLAUGHLIN: Whoops. It cleared.</p> <p>18 Damn thing.</p> <p>19 COUNCILOR WIECZOREK: I thought you were</p> <p>20 giving me an eye test.</p> <p>21 (Laughter.)</p> <p>22 MR. MCLAUGHLIN: He's a little boy. A</p> <p>23 little boy just three. He calls me Fa-Fa, and the</p>	<p>1 only thing he says to me -- he talks to everybody</p> <p>2 else. "Go for tractor, Fa-Fa." So I go on the</p> <p>3 tractor. This is what happens when we go on the</p> <p>4 tractor, and this is what happened to me last</p> <p>5 night. And this will be the baseline for my</p> <p>6 discussions with you. Before I go on the tractor</p> <p>7 I check the oil. Every damn time I check the oil</p> <p>8 I use this.</p> <p>9 (Attorney McLaughlin displays a plastic</p> <p>10 funnel.)</p> <p>11 And one time out of two it goes over the</p> <p>12 top. And I use it for a metaphor. Everything</p> <p>13 that happens here starts at the top, and it's the</p> <p>14 outcome that matters because the outcome is</p> <p>15 narrow. Yes, I should have gone and pounded on</p> <p>16 that desk. And it probably would have been the</p> <p>17 better thing to do. It probably would have been</p> <p>18 the most fair thing for my client to do, but what</p> <p>19 came out wasn't that smooth because a lot of other</p> <p>20 stuff went in.</p> <p>21 Commissioner Bodi in his opening</p> <p>22 discussed what went in, and he did it in the</p> <p>23 context of what I will concede is a fair statement</p>

<p style="text-align: right;">662</p> <p>1 by the Attorney General when the Attorney General</p> <p>2 sought a way to frame the issues for you in a</p> <p>3 document that you'll find in a Motion referred to</p> <p>4 yesterday. The Attorney General encapsulated the</p> <p>5 Petition before you and said, "The sole issue</p> <p>6 before the Governor and Council is whether a</p> <p>7 Liquor Commissioner who injects himself into and</p> <p>8 directs an ongoing law enforcement investigation</p> <p>9 for political purposes should remain in a position</p> <p>10 with law enforcement oversight."</p> <p>11 That's a fair statement. That is what's</p> <p>12 at issue. So my client in his prepared opening --</p> <p>13 you may have a sense he went beyond it -- stated</p> <p>14 to you at the very beginning of it as follows. He</p> <p>15 said, "In following" -- "The following in part is</p> <p>16 evidence that I will present to refute the</p> <p>17 Attorney General." Now, bear in mind as an</p> <p>18 attorney, if there's a charge, I assume that</p> <p>19 that's what it's about. I don't know about other</p> <p>20 agendas. I assume what it's about.</p> <p>21 He said, "I did not direct an ongoing law</p> <p>22 enforcement investigation." And he didn't.</p> <p>23 There's not a scintilla of evidence of that, but</p>	<p style="text-align: right;">663</p> <p>1 in order not to have that just be assumed I</p> <p>2 presented the question to Eddie Edwards. Did he</p> <p>3 do this? Did he do this? Did he do this? Did he</p> <p>4 do -- he didn't do anything. What did he do? He</p> <p>5 directed the return of the equipment.</p> <p>6 I want to stop for a second on this idea</p> <p>7 of he directed the return of the equipment because</p> <p>8 it appeared to me that there had been a pretty</p> <p>9 decent explanation made of language, and that is</p> <p>10 to say the Attorney General's Office consistently</p> <p>11 referred to equipment, and it was pretty clear</p> <p>12 that there was a distinction. I'm sure that's not</p> <p>13 accurate. I've misstated. They referred to</p> <p>14 evidence. And it seemed pretty clear to me that</p> <p>15 the use of the word evidence was a generic, and</p> <p>16 what other people were talking about was equipment</p> <p>17 and the download.</p> <p>18 Given my age, I'm going to speak of</p> <p>19 camera and film. That's just the language I tend</p> <p>20 to use. Return the camera. Keep the film. But</p> <p>21 repeatedly when the questions were asked to</p> <p>22 witnesses, it's as though that distinction had</p> <p>23 never been made. The question always presents</p>
<p style="text-align: right;">664</p> <p>1 itself from the attorney's perspective in cross-</p> <p>2 examining these people, the evidence. The</p> <p>3 evidence. The evidence. Is anybody hearing me</p> <p>4 here?</p> <p>5 I mean it's like "Groundhog Day." We say</p> <p>6 camera and film. They say the evidence. Because,</p> <p>7 of course, if the instruction were return the</p> <p>8 evidence, then not only would my client not be</p> <p>9 here, my client would be in the Merrimack County</p> <p>10 Superior Court because that would be a felony, but</p> <p>11 it didn't happen, which is why he's not in the</p> <p>12 Merrimack County Superior Court.</p> <p>13 And why he's here, from my perspective, I</p> <p>14 did not share in this issue to bring him here. I</p> <p>15 am here because someone else made that decision,</p> <p>16 and I'm not going to second-guess that decision,</p> <p>17 but I am going to say this, and I'm going to end</p> <p>18 with it at the end of the day. Right now the</p> <p>19 Petition is to have him removed. And if your</p> <p>20 focus is I either have to have him removed or</p> <p>21 vindicate him; I've either got to say he did a</p> <p>22 great thing or a bad thing, then with due respect</p> <p>23 I think you miss it.</p>	<p style="text-align: right;">665</p> <p>1 If Mark Bodi can stand up here and say</p> <p>2 it's obvious I could have done better, then maybe</p> <p>3 it's completely reasonable for the Executive</p> <p>4 Council to say having heard everything, we think</p> <p>5 you could have done better, also, and we'll make a</p> <p>6 point of it. We'll maybe make a point of it in a</p> <p>7 reprimand. We maybe do this. We maybe do that.</p> <p>8 We don't like it, but we're not going to fire you</p> <p>9 for it, not for what you did on the facts of this</p> <p>10 case. Firing is a bridge too far. It's not</p> <p>11 fundamentally fair in the circumstances of this</p> <p>12 particular case.</p> <p>13 So then he stated, "I did direct the</p> <p>14 return of the camera equipment but not the film."</p> <p>15 He said he had to manage pressure from</p> <p>16 Representative Eaton. They say he acted</p> <p>17 politically. Sometimes we're a prisoner of</p> <p>18 language. When someone says you act politically,</p> <p>19 the instinct I have is you're somehow or other</p> <p>20 feathering your own nest. You're doing something</p> <p>21 to advance yourself. That's how I think of that,</p> <p>22 and in a political universe it's completely</p> <p>23 reasonable, but not in this universe. So you can</p>

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<p>1 use the word politically, but, you know, there are</p> <p>2 some words that are words of description, and</p> <p>3 there are some words that are words of</p> <p>4 conclusion.</p> <p>5 For example, I say to you many things</p> <p>6 about something, and then I say and that's good.</p> <p>7 Or I say well, that's bad or I say that's</p> <p>8 political. Well, you know, good, bad, political</p> <p>9 are words of conclusion about something that you</p> <p>10 hear, and you decide to characterize it in that</p> <p>11 way. I have tried to stay away from</p> <p>12 characterizations of good, bad, political and say</p> <p>13 let me decide those things, will you? Tell me</p> <p>14 what the facts were. So that has been my goal</p> <p>15 with my client to tell you what the facts were so</p> <p>16 that you would understand that when you make your</p> <p>17 decision you're not basing your decision on some</p> <p>18 generalized characterization from somebody.</p> <p>19 You're doing it on the actual facts of the case.</p> <p>20 In his opening he stated that he did in</p> <p>21 fact think of Dan Eaton as a potent political</p> <p>22 force who was out to get his department, so to the</p> <p>23 extent that he acted politically I hope that you</p>	<p>1 will conclude that it wasn't for any personal</p> <p>2 aggrandizement on his part. He was trying to</p> <p>3 protect the interests of his agency.</p> <p>4 Is that not clear? Is it not clear that</p> <p>5 his agency was under fire? Is it not clear there</p> <p>6 was pending legislation to remove Enforcement and</p> <p>7 move it to Safety? Is that not clear? Is that</p> <p>8 not clear? Is it not clear that he would worry</p> <p>9 about his budget? Would that not be clear? Now,</p> <p>10 that much is clear.</p> <p>11 It may well be that Representative Eaton</p> <p>12 had every reason in the world to do what he was</p> <p>13 doing. I'm not going to second-guess that part of</p> <p>14 it. But my client viewed Representative Eaton as</p> <p>15 something other than the dignified and restrained</p> <p>16 presence here. He viewed him pretty much as the</p> <p>17 way Harvey Hill has characterized it. He viewed</p> <p>18 him as a person who was unguarded in his demands.</p> <p>19 Among the demands, fire Eddie Edwards, and this</p> <p>20 will all go away. Interestingly enough, with</p> <p>21 Harvey Hill, a remarkable coincidence. Hire</p> <p>22 somebody back. No. Fire somebody. No. He</p> <p>23 responded. If he were going to do something</p>
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<p>1 politically, he would have fired Eddie Edwards.</p> <p>2 I'm going to stop for a second. I'm</p> <p>3 going to do one of these backups. Give this man</p> <p>4 some credit. Give him some credit for standing by</p> <p>5 Eddie Edwards and not finding a way to get rid of</p> <p>6 Eddie Edwards. The man deserves credit. Eddie</p> <p>7 Edwards is not the easiest fellow in the world to</p> <p>8 work with. Straight. Undoubtedly. Very, very</p> <p>9 straight. Very straight. If I were designing an</p> <p>10 Eddie Edwards, I would prefer to design it like</p> <p>11 they design an airframe with the wings that just</p> <p>12 flip a little bit so they don't snap off. Eddie</p> <p>13 is a black and white person. He is a rigid</p> <p>14 person. He makes up his mind this is the way to</p> <p>15 do it. This is the way to do it. Everybody has</p> <p>16 got to conform with Eddie Edwards.</p> <p>17 Eddie Edwards testifies about something</p> <p>18 that's remarkably important to my client and goes</p> <p>19 to your question. Why didn't you go to the</p> <p>20 Attorney General? I'm going to ask you to suspend</p> <p>21 the way you would think about it and consider the</p> <p>22 way he would think about it. Is it not evident</p> <p>23 that there's some level of stress between my</p>	<p>1 client and the Attorney General? Is it just not</p> <p>2 self-evident? Is it not crystal clear that there</p> <p>3 is some level of stress between Eddie Edwards and</p> <p>4 the Attorney General's Office? I mean that is</p> <p>5 remarkable in itself, and it is not my invention.</p> <p>6 The man goes to be interviewed, and what does he</p> <p>7 do? He records it because he doesn't trust it.</p> <p>8 That says something about something going on</p> <p>9 there. Something going on.</p> <p>10 He has major call the AG's Office and</p> <p>11 says, "Don't tell them it's Dan Eaton." Now,</p> <p>12 that's a fact. No one is going to dispute that.</p> <p>13 The more important question is why is that? But</p> <p>14 the major blurts it out, and from Eddie's point of</p> <p>15 view they get the result they thought they were</p> <p>16 going to get. Now, they report that to him.</p> <p>17 Why didn't he go to the AG? He really</p> <p>18 believed in that sense he had. He made an</p> <p>19 assumption that that would be the kind of thing</p> <p>20 that that office would understand would be</p> <p>21 important. I mean it's not like calling and</p> <p>22 saying somebody drove at 75 miles an hour on the</p> <p>23 highway. The State's response is but it wasn't a</p>

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<p>1 formal complaint. Good grief. Good grief. You 2 call the fire department, and you say, you know, 3 there's smoke, and the chief says call back when 4 you see the fire.</p> <p>5 I'm telling you that there are certain 6 things that go up the chain of command or should. 7 One or the other. And when someone says that 8 we've gotten a call requesting our assistance 9 because Representative Eaton has walked in and 10 interfered with a search warrant, that should send 11 a signal to somebody. That's what he believed had 12 been conveyed, and that explains his reasoning in 13 believing that he had to resolve this problem on 14 his own, but there was some other things that are 15 very important.</p> <p>16 One, Randy Filiault spoke with him, and 17 what he was saying to him is this is payback. 18 These guys set me up. One of these fellows, 19 Sergeant Fussell, was here before. I had a 20 videotape of him. He's here in his SWAT gear 21 standing on my dance floor intimidating people. 22 At that moment Commissioner Bodi doesn't know 23 whether that's true or untrue. He doesn't know</p>	<p>1 whether it's true or untrue that Eddie Edwards has 2 in fact done something to go after this bar, kind 3 of, as Eaton says, stick a finger in your eye. 4 Maybe he didn't. Maybe he did.</p> <p>5 This all occurs in a 48-hour period. 6 That's what he understood was going on. So he 7 made a decision. I've got to find a way to deal 8 with this situation. He decided he was going to 9 return that equipment because returning the 10 equipment met Filiault's principal concern. If I 11 don't have the equipment, I won't be able to 12 defend myself and show what happens on my floor, 13 and these people will be back and set me up. 14 That's what he was presented with.</p> <p>15 Now, I want to go to one particularly 16 important part because I -- I just thought it was 17 critical. I thought it was the case. Unlike you, 18 I do not have the transcript of this proceeding. 19 So I'm telling you what I believe I did. And if 20 there's something about it that I'm in error 21 about, obviously you have a transcript, and I 22 don't. But I thought that if I could have taken 23 two minutes and presented my side of the case, and</p>
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<p>1 you'd say to me what would you have done in two 2 minutes, counsel? I would have put Eddie Edwards 3 on the stand. I would have looked at a particular 4 page from his interview at the Attorney General's 5 Office, page 194, and this is what I think I did.</p> <p>6 I said is this what you report to the 7 Attorney General? And I believe this is what the 8 record reflects. That in the Commissioner's 9 office he called the major. He got off the phone, 10 and he said to the Commissioner -- and I'm just 11 going to read this, but what I will introduce is 12 the name of the person speaking.</p> <p>13 "When I got off the phone. We can't get 14 it back to him. Can't." Eddie to the 15 Commissioner. "I go we haven't got the evidence 16 off it. We can't do it. So he goes" -- he 17 speaks. "We need to give that back to them. It's 18 got to go back. You heard me tell him. Time to 19 go," referring to the other conversation. "We 20 have to get the evidence," says Eddie. "We have a 21 Court Order. We have to get the evidence. So he 22 and I were going back and forth on that. So I 23 called Todd, the major, and I said how much more</p>	<p>1 recording do they have left?"</p> <p>2 He calls Todd, the major, in the 3 Commissioner's office in front of the Commissioner 4 asking how much more recording do they have left. 5 "Do you know where they are in the recording 6 process? He goes they went to Keene to do the 7 interviews, Sergeant Fussell and -- um -- Matt 8 Elliott and someone else. They went to Keene to 9 to do the interviews. So I go is anybody else 10 doing record so we can get the evidence secured?"</p> <p>11 It's a statement made by Eddie Edwards in 12 the presence of the Commissioner to Todd on the 13 phone. "He goes no. I go well, we've got to get 14 the evidence secured at some point, so -- um -- 15 let me know when that process is going to be. So 16 he hung up and called back. I ended up talking to 17 Todd again from the Chairman's office. And I said 18 Todd, have the evidence secured. I don't care if 19 we have to pay overtime. It has to happen."</p> <p>20 And that of course is exactly what 21 occurred. So if you ask what it is at the end of 22 the conversation that the Commissioner thought was 23 happening, it's he thought they were being paid</p>

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<p>1 overtime to secure the evidence, the film, so they</p> <p>2 could return the camera equipment. Now, you're</p> <p>3 not going to find anyplace in this entire case</p> <p>4 where the evidence is more direct because the</p> <p>5 truth of the matter is the only people who know</p> <p>6 what was said to whom, the key to this, would be</p> <p>7 the Commissioner and Eddie Edwards in that office</p> <p>8 that evening. That's it, and this is Eddie</p> <p>9 Edwards' statement, not my client's. My client</p> <p>10 agrees with it.</p> <p>11 So when the allegation is made that he</p> <p>12 made an illegal order to return the evidence, I'm</p> <p>13 sorry. This is what occurred. This is what</p> <p>14 occurred. But if you think that you can get the</p> <p>15 State to budge for a second off its reiteration</p> <p>16 that he told him to return the evidence, it's not</p> <p>17 going to happen. So then what I want to do is</p> <p>18 this. I want to ask myself some questions</p> <p>19 rhetorically and then answer the questions.</p> <p>20 Let's suppose for a moment that some</p> <p>21 things happened that didn't happen. Let's</p> <p>22 suppose, for example, that Mike Delaney had a more</p> <p>23 full understanding of what was occurring. Let's</p>	<p>1 suppose that Mark Bodi did not see this situation</p> <p>2 through the prism of whatever the animosities are</p> <p>3 here or the trust issues with the Attorney</p> <p>4 General's Office. Let's suppose that the Governor</p> <p>5 had somehow or another been made privy to this.</p> <p>6 This is just my take on what would have happened</p> <p>7 if people had known more at a particular point in</p> <p>8 time. My guess. No disrespect, Governor. This</p> <p>9 is what I believe.</p> <p>10 I believe the Governor of this State</p> <p>11 would have called in the Attorney General and the</p> <p>12 Liquor Commissioner and said look, I have no</p> <p>13 interest whatsoever in your damn turf wars. This</p> <p>14 is what I understand is going on. You got a</p> <p>15 mistrust issue with Eddie Edwards. I don't like</p> <p>16 it. Fix it. You got a mistrust issue between</p> <p>17 yourselves. I don't like it. Fix it. My guess</p> <p>18 is that if the Governor had known that, that is</p> <p>19 exactly what he would have done, and it's obvious</p> <p>20 that he didn't know that. He had no opportunity</p> <p>21 to do that. I understand that. I accept that.</p> <p>22 But that is in fact what ought to have occurred</p> <p>23 here. It never percolated to the top that way, so</p>
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<p>1 that couldn't get done.</p> <p>2 What got done, Councilor Wiczorek, is</p> <p>3 everything that went into this top of this funnel,</p> <p>4 and the outcome was equipment was returned, not</p> <p>5 evidence. And you're right. Somebody should have</p> <p>6 done something, and it didn't work out that way.</p> <p>7 But then you have to ask the question. If what</p> <p>8 I've said is correct, is that a reason to</p> <p>9 terminate this man and fire him as a Commissioner</p> <p>10 or is that a reason to say look, this is the first</p> <p>11 time the Governor -- it's the first time the</p> <p>12 Governor and the Council have actually had the</p> <p>13 benefit of the story, as much as it can be told,</p> <p>14 and let us tell you something. We don't like it,</p> <p>15 and it's our job to tell you we don't like it, and</p> <p>16 we think you should have done better, and it's our</p> <p>17 job to tell you you should have done better.</p> <p>18 If you can fire a man, then you can do</p> <p>19 something less. If you can fire a man, then you</p> <p>20 can reprimand a man. If you think he should have</p> <p>21 done something else, that's fine, but don't go</p> <p>22 back and tell him what he should have done that</p> <p>23 night given the circumstances of that night</p>	<p>1 because, with all due respect, that is called</p> <p>2 hindsight.</p> <p>3 And he may not have been the smoothest</p> <p>4 thing ever to come down the pike. He's not. My</p> <p>5 client is not the smoothest thing to ever come</p> <p>6 down the pike. Sometimes his own tendencies can</p> <p>7 make him his own worst enemy, but that man did not</p> <p>8 behave with political motives that had anything to</p> <p>9 do with feathering his own nest. He was trying to</p> <p>10 protect his agency in a universe that he thought</p> <p>11 existed.</p> <p>12 So I'm asking you this. You have the</p> <p>13 power here to do ultimately what's fair. And what</p> <p>14 has bothered me about this is the way it's been</p> <p>15 framed is we will either indict or not indict.</p> <p>16 We'll either remove him or we won't remove him.</p> <p>17 That is not a stage that you have to stand on.</p> <p>18 You can do what you want. And let me tell you</p> <p>19 what I fully believe, fully believe will be</p> <p>20 completely acceptable to the citizens of this</p> <p>21 state.</p> <p>22 Criticize the process but recognize that</p> <p>23 from the Commissioner's perspective and from Eddie</p>

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<p>1 Edwards' perspective people were not trying to do</p> <p>2 harm here. They were trying to prevent harm as</p> <p>3 they saw it. That really is what it comes down</p> <p>4 to. Make that judgment. Give people the benefit</p> <p>5 of the doubt and understand most powerfully that</p> <p>6 the Commissioners of this Government don't have my</p> <p>7 kind of job.</p> <p>8 The Commissioners of this Government are</p> <p>9 sent out there to ride these waves of politics</p> <p>10 here and there, and they're expected to make their</p> <p>11 decisions, and the best of them make tough</p> <p>12 decisions. Well, he made a tough decision in a</p> <p>13 universe where clearly there is some considerable</p> <p>14 discord between department heads and departments.</p> <p>15 But there is no justice in making him the</p> <p>16 scapegoat for that at the end of the day.</p> <p>17 Say what you wish. He's got it coming.</p> <p>18 Fire him. A bridge too far. Governor, I'll end</p> <p>19 as I began. Thank you very much for your time and</p> <p>20 attention. You have presided in a dignified way.</p> <p>21 I know that. It's the truth. Thank you very</p> <p>22 much.</p> <p>23 GOVERNOR LYNCH: Thank you very much,</p>	<p>1 Attorney McLaughlin. Attorney Rice. Are you</p> <p>2 okay?</p> <p>3 (The court reporter responds in the</p> <p>4 affirmative.)</p> <p>5 (A discussion is held off the record.)</p> <p>6 MS. RICE: Before I get started, I just</p> <p>7 want to say that during my argument I am going to</p> <p>8 refer to people by their last name. I will refer</p> <p>9 to Commissioner Bodi by the name Bodi. I will say</p> <p>10 Eaton referring to Representative Eaton, and I</p> <p>11 mean no disrespect in doing that at all. It is</p> <p>12 simply unwieldy to continue to say those titles</p> <p>13 when you have to say them over and over and over</p> <p>14 again, so I hope that you understand that.</p> <p>15 This case is about public trust,</p> <p>16 maintaining the integrity of law enforcement</p> <p>17 investigations. The primary responsibility of any</p> <p>18 public official charged with oversight of a law</p> <p>19 enforcement agency is to ensure that those law</p> <p>20 enforcement efforts are carried out fairly,</p> <p>21 impartially, without any taint of political</p> <p>22 influence. And Mark Bodi failed in that</p> <p>23 responsibility.</p>
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<p>1 Mark Bodi crumbled under pressure or</p> <p>2 perceived pressure of one legislator. And instead</p> <p>3 of doing what you would expect any Commissioner</p> <p>4 might do, to tell Representative Eaton that he</p> <p>5 couldn't talk about an ongoing law enforcement</p> <p>6 investigation or to say that he'd look into the</p> <p>7 complaint. Instead, Commissioner Bodi panicked.</p> <p>8 He overreacted, and he panicked, and then he did</p> <p>9 what he could to appease Dan Eaton and get Eaton</p> <p>10 off his back. Without making any effort to find</p> <p>11 out if there was any validity to Eaton's concern,</p> <p>12 he injected himself into that ongoing</p> <p>13 investigation, and he ordered Director Edwards to</p> <p>14 return the physical evidence.</p> <p>15 Now, Attorney McLaughlin takes issue with</p> <p>16 my saying it was physical evidence, but in fact it</p> <p>17 was because the video footage was contained on</p> <p>18 that surveillance equipment, and until they were</p> <p>19 able to download that surveillance -- that video</p> <p>20 footage, it was physical evidence.</p> <p>21 Luckily, the Commissioner's order to</p> <p>22 return that evidence didn't compromise the</p> <p>23 investigation, but that certainly wasn't because</p>	<p>1 he took the time to ascertain the facts and make</p> <p>2 and understand the consequences of his decision.</p> <p>3 It was because he had Chief Edwards. Chief</p> <p>4 Edwards took the steps to ensure that the return</p> <p>5 would not happen until all of the video footage</p> <p>6 had been downloaded.</p> <p>7 Is that acceptable conduct for a</p> <p>8 Commissioner? No, it's not. And even yesterday</p> <p>9 when he was asked what he would do if it happened</p> <p>10 again, he couldn't really tell you that he would</p> <p>11 do anything differently. He told you that other</p> <p>12 people should do things differently but not what</p> <p>13 he would do differently.</p> <p>14 His behavior in December of 2009 and his</p> <p>15 testimony during this hearing clearly demonstrates</p> <p>16 that he is not fit to carry on the</p> <p>17 responsibilities of the Chairman of the Liquor</p> <p>18 Commission and have oversight over the law</p> <p>19 enforcement activity.</p> <p>20 There is really no dispute about what</p> <p>21 happened here. There were two search warrants</p> <p>22 executed at the tavern. During the first, the</p> <p>23 investigators had encountered technical problems</p>

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<p>1 downloading the video. At about 10 minutes before 2 they left, Dan Eaton showed up. Eaton didn't 3 impede the investigators in any way, but the 4 investigators said that they found his presence 5 intimidating. They found it intimidating, he 6 said -- or Sergeant Fussell said because he knew 7 that Eaton had been advocating for the transfer of 8 the Liquor Enforcement over to Safety, and that 9 was something that no one in Liquor really 10 wanted.</p> <p>11 And Sergeant Fussell said that he was 12 also aware that Dan Eaton wanted to have the Chief 13 fired. In light of that knowledge, Fussell 14 believed that Dan Eaton was there to investigate 15 his conduct and to investigate his agency and find 16 evidence against that agency. So he reported 17 Eaton's appearance to his supervisor, and that 18 news was quickly passed on to the Commissioner. 19 And that is when he panicked.</p> <p>20 He told Chief Edwards this is an absolute 21 mess. He said, you know, they worked so hard to 22 fight the transfer of the Enforcement Division, 23 and they'd gotten over that hurdle, and now he had</p>	<p>1 to face this situation. In his own words, he was 2 battle fatigued, and he was angry at Chief Edwards 3 for putting him in that situation.</p> <p>4 So when the Chief authorized the second 5 warrant he made a conscious decision not to tell 6 Commissioner Bodi even though he knew how upset 7 the Commissioner was about this whole situation. 8 Why did he do that? Why did Chief Edwards 9 purposely avoid abating him? He didn't want to 10 admit it on the stand. But he eventually admitted 11 that he was afraid that the Commissioner would 12 tell him not to go back to the tavern. He was 13 afraid that the Commissioner would order him to 14 stop collecting the evidence they needed to 15 complete that investigation, but they did go 16 back.</p> <p>17 Sergeant Fussell got the second warrant. 18 They executed the warrant, and everything went 19 smoothly. A Keene Police officer was there to 20 provide backup. There was no repeat appearance by 21 Dan Eaton. The investigators seized the evidence 22 they needed, and they left. No damage to the 23 building. No damage to the equipment. There are</p>
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<p>1 pictures to prove it, and you've seen those 2 pictures, pictures that were readily available to 3 Commissioner Bodi.</p> <p>4 In the meantime, after the first warrant 5 Representative Eaton called Bodi. And here's 6 where the real -- the first real disputed fact 7 comes in, the content of that conversation. 8 According to Bodi, Eaton was hysterical. He was 9 accusing the Enforcement Division of targeting the 10 tavern to get back at him.</p> <p>11 Eaton described it quite differently, as 12 you recall. He said that he was calling to give 13 Bodi a heads up, to say hey, that guy that I 14 complained about in the last situation at the 15 tavern, he was the same guy that was there 16 executing the warrant that night. But, you know, 17 regardless of whose version is accurate, there's 18 no dispute that in the eyes of the Commissioner 19 the call was a sure sign that trouble was 20 brewing.</p> <p>21 And then he got a second call from Eaton 22 after the second warrant, and Eaton's concerns 23 during that call were clear. Your investigators</p>	<p>1 stormed the tavern. They ripped the surveillance 2 equipment off the wall. They took evidence that 3 went beyond the scope of the search warrant. 4 Bodi's reaction to that? He said Eaton, what do 5 you want me to do? Think about it. If you 6 received a complaint like that from an employee -- 7 about an employee, wouldn't your first reaction be 8 to try and investigate the complaint, to go talk 9 to the employees, to talk to the people that were 10 there and find out if there's any accuracy to what 11 you're hearing?</p> <p>12 That wasn't what Commissioner Bodi did. 13 His first reaction was to try and figure out how 14 he could placate Eaton. He didn't know how to do 15 it, so he looked to Eaton to tell him. Eaton told 16 him to call the tavern owner, so he did. And that 17 really only made things worse because now he's 18 talking to a licensee. He's talking to a person 19 who he knows is the target of an ongoing 20 investigation.</p> <p>21 It's an action he'd never taken before, 22 and it was a problem because one of his 23 responsibilities as a Commissioner is to serve as</p>

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<p>1 an impartial adjudicator in enforcement actions if 2 they come before the Commission. And by having 3 this conversation with Randy Filiault he can no 4 longer serve that function if the case ends up in 5 hearing.</p> <p>6 So why does he make the call? Well, by 7 his words, he said, "I would appease 8 Representative Eaton, and I would attempt to 9 control what was becoming an out-of-body 10 experience." What he really should have done is 11 what his attorney did. Take a step back. Look at 12 what's going on and think about what the 13 appropriate response is. But he didn't do that.</p> <p>14 He made the call, still without having 15 gotten any information from his own employees. 16 And he talked to Filiault, who he described as 17 hysterical. Filiault was making the same 18 accusations that Eaton did, and he's voicing fear 19 that he was going to be targeted again, and he 20 wouldn't be able to defend himself.</p> <p>21 So Bodi gave Filiault his assurance that 22 the equipment would be returned. He did so 23 without under -- having any understanding of how</p>	<p>1 it might affect the investigation. And it 2 completely undermined the authority of Sergeant 3 Fussell, who had already explained to Filiault 4 that that evidence would be held until the close 5 of the case.</p> <p>6 It was only after the call to Filiault 7 that Commissioner Bodi finally turned to the Chief 8 for information, but even then he didn't really 9 address the complaints that Eaton had raised. It 10 would have been a logical step at that point to 11 ask the Chief to assign someone to investigate the 12 allegations of the employee's conduct. I mean 13 that's what the policies called for. But if he 14 was worried about that taking too much time, the 15 Commissioner certainly could have talked to his 16 investigators, reviewed the search warrant, looked 17 at the pictures, talked to the Keene Police 18 officer who was standing by. Any of those things 19 would have helped him assess whether there was any 20 validity to Eaton's and Filiault's complaints.</p> <p>21 And, in fact, he told you he was having 22 concerns at that point that there might be some 23 targeting going on. Well, there was ample</p>
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<p>1 evidence -- or ample information that he could 2 have looked at to make that determination. But 3 instead he had a conversation with Edwards, a 4 general conversation, and they commiserated about 5 the unfairness of the situation, a situation that 6 Bodi likened to a jihad.</p> <p>7 And his solution to that situation? He 8 ordered the return of the surveillance equipment 9 over the forceful protest of Chief Edwards, his 10 chief law enforcement officer. Bodi demanded that 11 the equipment be returned that night. And why? 12 Where was the urgency? It wasn't something that 13 Dan Eaton asked him to do. But, according to 14 Bodi, he gave the order in an attempt to loosen 15 Eaton's assertive hand and defuse a near explosive 16 situation.</p> <p>17 Chief Edwards reluctantly acknowledged 18 that he believed that Bodi gave that order because 19 Bodi was afraid of Eaton. He was afraid of Eaton, 20 and he wanted to show Eaton he was in control, but 21 in fact Bodi collapsed under that pressure from 22 Eaton. But really where was the pressure? What 23 was it? Where was it coming from? What was the</p>	<p>1 urgency to act? Those are the questions that were 2 posed to him a number of times during this 3 proceeding, and he has yet to provide a clear 4 answer to that.</p> <p>5 In fact, the pressure was really in the 6 Commissioner's own head. He overreacted, and he 7 blew this situation completely out of proportion. 8 But Bodi didn't stop with ordering the equipment 9 returned. He made it clear to the Chief that he 10 wanted this issue of the Railroad Tavern to go 11 away. He asked the Chief can't we hold off on 12 this? Can't we make this go away? And it was 13 that message that caused the Chief to issue a 14 notice to the tavern quickly, less than 72 hours 15 after the first warrant was served. And he did it 16 without any forewarning to Bodi because he 17 believed that Bodi would tell him not to do it.</p> <p>18 He believed, based on Bodi's reaction to 19 the call from Dan Eaton, that his Commissioner's 20 desire was to appease Dan Eaton, and that that 21 would take priority over the need for impartial 22 law enforcement. Chief Edwards didn't want to 23 give his Commissioner that choice. As much as</p>

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<p>1 Chief Edwards was reluctant to admit it, he was 2 trying to avoid the situation where his boss was 3 going to continue making decisions based on 4 political influence.</p> <p>5 But Bodi's quest to quell this case 6 continued. If you remember, yesterday he told you 7 that after the administrative notice was issued he 8 met personally with Dan Eaton and the licensee, 9 and at the end of the meeting after Filiault left 10 the room, he pulled Eaton aside and broached the 11 idea of settling. He told you he had his own 12 ideas about how to settle the case.</p> <p>13 Why do you think this was appropriate? 14 Because he recused himself as a Commissioner? 15 Well, talk about confusing roles and undermining 16 staff. Now we have a Commissioner who's engaging 17 in negotiations, something that is exclusively the 18 role of the Chief of Law Enforcement. And he's 19 doing it after the Chief had already told him that 20 the Chief was going to seek suspension of the 21 license.</p> <p>22 Commissioner Bodi was trying to 23 completely circumvent the process and strike a</p>	<p>1 deal on his own. That kind of action might work 2 in the private sector. But not here. Not in 3 government, not by the head of an agency, and not 4 in law enforcement. Think about that.</p> <p>5 Commissioner Bodi was engaging in settlement 6 negotiations in a case in which he recused 7 himself.</p> <p>8 Now, he told you in his opening 9 statement, and he continued to say throughout the 10 hearing that he was all alone in this situation. 11 He had no other choice but to take immediate 12 action under highly unusual circumstances. There 13 are several parts of that assertion that simply 14 don't ring true.</p> <p>15 First, what is it that was so highly 16 unusual? That a Representative called in a 17 complaint about the investigators' conduct and 18 their treatment of the licensee. You know, 19 Commissioners get complaints all the time from 20 legislators. It's called constituent services. 21 And in this case it was constituent services 22 involving a complaint, and the Liquor Commission 23 has a policy for how you deal with that. So is it</p>
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<p>1 the fact that the call was made by Representative 2 Eaton?</p> <p>3 Well, if you remember, Commissioner Bodi 4 specifically told Representative Eaton to call if 5 he heard about problems with his Law Enforcement 6 Division, and that's what Eaton was doing. So it 7 was unusual because there was this -- that Dan 8 Eaton had been a vocal advocate for transferring 9 Liquor Enforcement to safety. You know, that's 10 part of our legislative process. Sure, Bodi and 11 Eaton took opposite sides on that, but it was a 12 matter for public debate. It was played out in 13 the public arena, and there's nothing unusual 14 about that.</p> <p>15 Is it unusual because Dan Eaton 16 apparently had some kind of animus against Eddie 17 Edwards? You know, that's not a great situation, 18 but it's not anything that would require someone 19 to act immediately. Obviously the calls were 20 concerning, and it's something that any 21 Commissioner should take seriously. But highly 22 unusual? Absolutely not.</p> <p>23 What was highly unusual was that Bodi</p>	<p>1 made his staff turn back property, turn back 2 property that they seized pursuant to a Court 3 Order. In fact, that action was unprecedented and 4 completely contrary to the standard operating 5 procedure for that agency.</p> <p>6 What about Bodi's claim of being all 7 alone to make the decision what to do? Well, as 8 Councilor Shea pointed out yesterday, Mark Bodi 9 isn't the only Liquor Commissioner. You know, he 10 could have consulted with Commissioner Simard. 11 And if this was such a big problem for the agency, 12 that's exactly what he should have done because 13 full leadership should know about that.</p> <p>14 Commissioner Bodi told you he couldn't do 15 that for two reasons. First, Commissioner Simard 16 didn't have the capacity to understand the issues, 17 and, second, he wanted to keep Commissioner Simard 18 away from the case so that Simard could sit if the 19 matter came to adjudication.</p> <p>20 You know, maybe Commissioner Simard 21 didn't have the background in law enforcement. 22 Neither did Commissioner Bodi. He freely admitted 23 that to you. Who does have the background? The</p>

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<p>1 people that have the background are his Law 2 Enforcement Division. Chief Edwards. Chief 3 Edwards, who directly told him not to order the 4 equipment back.</p> <p>5 But, you know, lack of law enforcement 6 background wasn't stopping Commissioner Bodi from 7 injecting himself into the situation, but, you 8 know, the discussion with Commissioner Simard 9 didn't have to be about law enforcement. The 10 discussion should have been something like hey, 11 I've gotten this call from a legislator. He's 12 calling me about an ongoing investigation, and I 13 really think that's inappropriate. What do you 14 think we should do? How do you think we should 15 handle this problem? There was no need to get 16 into the facts of the case. It would not have 17 tainted Commissioner Simard to have that 18 discussion.</p> <p>19 There are certainly other places that the 20 Commissioner could have turned. His legal counsel 21 at the Attorney General's Office, for one. He did 22 have legal counsel in December of 2009. And even 23 if he's right, that it was someone he didn't have</p>	<p>1 a longstanding relationship with, that doesn't 2 matter. The guidance was available. All he had 3 to do was call.</p> <p>4 And this whole thing about the AG's 5 Office turning its back and running when it 6 learned that Dan Eaton was involved, that we 7 refused to respond to a public integrity 8 complaint, that simply is not true. There was one 9 call to our office, and you heard what that call 10 entailed. It wasn't a complaint that Dan Eaton 11 was interfering with the execution of a search 12 warrant. It wasn't a complaint that Dan Eaton was 13 engaging in criminal activity.</p> <p>14 Major Feyrer called with a simple, 15 straightforward request. Can you provide some 16 assistance with the execution of a search 17 warrant? We need someone to stand by as a partial 18 observer. There was nothing about that 19 conversation that would have alerted Investigator 20 Tracy that this was anything other than a request 21 for a routine stand-by. That's something that 22 every law enforcement agency does, and it's 23 exactly what the Keene Police did in this case.</p>
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<p>1 Eddie Edwards was so paranoid about 2 telling the AG's Office about Dan Eaton that he 3 didn't even want Major Feyrer to mention the 4 name. Think about that. They're calling about 5 Dan Eaton. Supposedly they're calling about Dan 6 Eaton interfering, but they're not even going to 7 let us know who it is. He apparently believed 8 that just the name, just the mention of Eaton's 9 name would set off big, flashing lights, but the 10 truth is, and you heard Investigator Tracy say it, 11 the name didn't mean a thing to him.</p> <p>12 Commissioner Bodi likened Dick Tracy's 13 response to the FRM situation, and in fact this is 14 exactly the opposite. Excuse me. Major Feyrer 15 called the Attorney General's Office asking for 16 help, and he was given the guidance he needed. He 17 was told to contact the State Police or the Keene 18 Police Department, and he did just that. This was 19 no FRM.</p> <p>20 What about the Commissioner's claim that 21 he had no other option at the time? You know, as 22 I've already said, there was no need for immediate 23 action, let alone the ordering the return of the</p>	<p>1 evidence. And it was evidence when he made that 2 order. It was still evidence. Bodi could have 3 simply said to Dan Eaton I can't talk to you about 4 an ongoing investigation, but I'll certainly have 5 someone contact you to discuss your concern.</p> <p>6 You know, Commissioner Bodi has said that 7 he was acting in the best interests of the people 8 by avoiding the emasculation of a Liquor 9 Commission's ability to enforce the laws. That's 10 how he described his actions. And, you know, 11 maybe he's right. Maybe Enforcement shouldn't go 12 to Safety. There's a study commission that's 13 looking at that issue right now, but that's not a 14 matter that should get decided or even debated in 15 the context of a particular law enforcement 16 matter. It's a public policy issue, a matter for 17 public debate in the Legislature, and he shouldn't 18 be using his law enforcement authority to mollify 19 his opponent.</p> <p>20 Just a quick point. Bodi claims, and his 21 attorney claims that our office gave him an 22 ultimatum. He claims that we demanded he resign 23 or face criminal charges, and that is simply</p>

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<p>1 inaccurate. Our attorney had discussion with 2 Attorney McLaughlin before we had made any 3 decision about charges. And he -- she talked to 4 him about the range of possible options and 5 outcomes of our investigation, including the 6 option of resignation. That's a discussion that 7 we have in virtually every single public integrity 8 investigation that we do, and there is nothing 9 improper about it.</p> <p>10 Bodi told you that he had nothing to gain 11 politically by his conduct, and I want to make 12 clear we are not alleging that he did. What he 13 did do was allow his actions in a law enforcement 14 investigation to be influenced by political 15 demand, the very thing that he said he wanted to 16 prevent by those ethics provisions in his Liquor 17 Commission Modernization Act.</p> <p>18 You know, perhaps you've noticed the 19 Commissioner has been pushing a consistent theme 20 throughout this hearing, the theme that everyone 21 else is to blame. If other people had done their 22 job, I wouldn't be here. His opening statement, 23 his testimony, his answers to your questions, and</p>	<p>1 even to some extent what his attorney told you in 2 closing argument, it was an exercise in finger 3 pointing and shifting the blame. I had nowhere to 4 turn because everyone else was either too scared 5 of Dan Eaton to help, they wouldn't listen, they 6 weren't responsive or they were corrupt.</p> <p>7 Think about all of the people that got 8 blamed over the course of the last two and a half 9 days. The Governor's Office, House leadership, 10 Senate leadership, the Attorney General, the 11 Deputy Attorney General, Commissioner Simard, 12 Commissioner Russell, Attorney Mike Brown, Linda 13 Hodgdon, the Keene Police Department, Commissioner 14 Barthelmes, Dan Eaton, and even Chief Edwards.</p> <p>15 Don't look to where Commissioner Bodi is 16 pointing his finger. Look at what he did as a 17 Commissioner. He is responsible, along with his 18 fellow Commissioners, for managing his agency and 19 the problems that it encountered. You know, what 20 do you expect from your Commissioner? What can we 21 expect from them? That they act fairly, they act 22 impartially, that they'll make decisions based on 23 their best understanding of all the facts, that</p>
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<p>1 they'll seek outside guidance as needed to fulfill 2 their duties responsibly. Did they follow their 3 agency's rules? Did they have the ability to work 4 under pressure and to maintain their composure in 5 stressful situations? To know when to -- to know 6 when they need help and to seek it out.</p> <p>7 And we can all agree those are all 8 reasonable expectations of a Commissioner. And 9 what about for a Commissioner who has a 10 responsibility for overseeing a law enforcement 11 agency? I think it's reasonable to expect that 12 that person will understand protocol that govern 13 investigations and to make it a priority to 14 protect the integrity of those investigations. 15 Those are all reasonable expectation for anyone 16 who assumes the responsibilities of Commissioner, 17 and Mark Bodi failed in all those regards when he 18 ordered Chief Edwards to return the equipment and 19 encourage the Chief to make the tavern case go 20 away.</p> <p>21 His conduct amounts to a combination of 22 malfeasance and misfeasance, and it demonstrates 23 that he is not to be fit -- he is not fit to be in</p>	<p>1 the position of authority of a law enforcement 2 agency. And for that reason we would ask you to 3 remove him from office. Thank you for your time 4 and your attention.</p> <p>5 GOVERNOR LYNCH: Thank you very much, 6 Attorney Rice. With that, I would like to close 7 this hearing. And we will recess until further 8 notice. I'd like to thank the attorneys for your 9 civility during the course of this hearing. So we 10 are now recessed. Thank you both very much.</p> <p>11 MR. MCLAUGHLIN: May I make a procedural 12 inquiry, Governor? Does recess mean recess, and 13 the attorneys remain here or does it mean recess, 14 and we will be advised at some point in the 15 future?</p> <p>16 GOVERNOR LYNCH: It is the latter, 17 Attorney McLaughlin.</p> <p>18 MR. MCLAUGHLIN: The latter. Thank you 19 very much, Governor.</p> <p>20 GOVERNOR LYNCH: Okay. Thank you very 21 much. 22 (The proceedings conclude at 10:08 a.m.) 23</p>

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1 CERTIFICATE OF REPORTER

2 I, Debra L. Mekula, Licensed Court Reporter of
3 the State of New Hampshire for the aforementioned
4 proceedings, do hereby certify that the evidence
5 and proceedings are contained fully and accurately
6 in the machine shorthand notes taken by me at the
7 hearing of the within cause at Concord, New
8 Hampshire, on Thursday, September 23, 2010, that
9 the same were transcribed by me, and that this is
10 a true, complete, and accurate transcript of the
11 same.

12

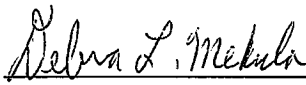
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18 Debra L. Mekula, LCR, RMR

Licensed Court Reporter

19 Registered Merit Reporter

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